TODILTO

EXPLORATION AND DEVELOPMENT CORPORATION

G. WARNOCK
PRESIDENT

January 16, 1992

The Board of Contract Appeals
US Department of Energy
Washington, D.C. 20545

SUBJECT: Mining Lease AT(05-1)-ML-60.8-NM-B-1

Gentlemen:

Pursuant to ARTICLE XXX, DISPUTES, in the above referenced contract, Todilto hereby appeals the decision of the DOE Contracting Officer dated December 30, 1991, attached as Exhibit 1, for the following reasons.

1) ARTICLE XV, PERFORMANCE BOND

The Contracting Officer's decision to increase the current bond from $10,000 to $200,000 is, by his own statement, in retaliation for Todilto's decision not to undertake certain mine closure work as subcontractor of DOE's prime contractor, Chem-Nuclear Geotech Inc.. The mine closure work is described in a Statement of Work, attached as Exhibit A to Geotech's July 23, 1991 Request for Proposal sent to the undersigned.

It is our understanding from the Contracting Officer and DOE counsel that the Doe has decided to undertake this work in response to certain concerns of the EPA with gamma radiation that the EPA claims it detected at an ore storage area outside the mine and with radon it claims it detected at the vent holes and ventilation raise for the mine, although the EPA has not notified the DOE that it is a Potentially Responsible Party (PRP) under CERCLA directing the DOE to perform any mine closure work. We also understand that while the Contracting Officer does not claim that the mine closure is required by the lease, he believes it constitutes "lawful uses...granted by the Government" that do "not obstruct or unduly interfere with any right granted under this lease," as provided in subparagraph VIII(b) of the lease. We understand that the Contracting Officer proposed these particular methods of mine closure, as opposed to other alternatives, to the EPA and the Department of the Interior and sought and obtained the EPA's approval of them as a plan of corrective action. Finally, we understand from the Contracting Officer that while the mine closure would settle matters between the DOE and EPA, it is his position that it would not settle Todilto's obligations under the lease and would leave the Contracting Officer as well as the EPA, free to continue to pursue Todilto on any matter concerning the lease and the mine.

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Todilto has previously furnished the Contracting Officer with full details of our gamma, radon and land use pattern surveys which clearly contradict the EPA's contentions including a statement of our position in this matter per our letter to the Contracting Officer dated August 23, 1991 attached as Exhibit 2. In these circumstances, we could not undertake this mine closure work as the Contracting Officer's subcontractor. If we did, we would be contracting to substantially damage, if not destroy, our own leasehold and, in practical effect, bring the lease to an end without any agreement from the DOE (or the EPA) that anything is settled, and with the DOE still insisting that other work is required of us. Also we do not agree that these methods of mine closure are necessary under CERCLA, or that the lease requires or authorizes the DOE to cause this work to be performed. The mine closure is not the grant of a use and clearly would obstruct or interfere with our mining rights under the lease.

The Contracting Officer's demand for a twenty times increase in the performance bond solely with the objective of forcing Todilto out of the lease to allow the Contracting Officer to satisfy the EPA's unproven demands, if granted on appeal, would be a taking of Todilto's leasehold rights.

2) ARTICLE VI. MINIMUM ROYALTY

It is our understanding from the Contacting Officer that it is the DOE's position that we are in default of this article in the amount of $40,000 representing the minimum royalty payments for 1988, 1989, 1990 and 1991. This contention, again, is solely an attempt to force Todilto out of the lease to appease the EPA and the record shows that the minimum royalty requirement was waived by the DOE from 1983 through 1992, on a year by year basis, to wit "...The major considerations in this determination were the preservation of the surface land use permit with the BIA, the maintenance of access to the mineral resource in the mine and the retention of a qualified lessee like your company...." from Clayton B. Nichols, Contracting Officer, Grand Junction Office, dated July 29, 1983 to the undersigned. This agreement has remained in effect since inception and required Todilto to maintain the mine openings in a safe condition with semi-annual inspections and reports thereof to the DOE on the condition of the mine, which we have done faithfully as the record shows, at considerable expense to Todilto.

It is our understanding from the Contracting Officer that he no longer chooses to continue this agreement as he feels he must satisfy the EPA at any cost to the DOE or Todilto; but to attempt to change the agreement on the minimum royalty and maintenance of the mine retroactively is not legal under the lease. Todilto has fulfilled it's agreement of the waiver of the minimum royalty and is not liable for back minimum royalties or a breach of Article VI of the lease. If on appeal, such breach is confirmed, this will constitute a taking of Todilto's leasehold rights.

Todilto hereby respectively request an administrative finding of no breach of the lease and no "Cancellation of Lease" and if further evidence is required, a full hearing before the Commission on the merits of the decision and is prepared to fully document it's position on this matter.

Sincerely,

President

GW/gbr
c/ Mr. Robert E. Ivey

EXHIBIT 1

Department of Energy
Grand Junction Projects Office
Post Office Box 2567
Grand Junction, Colorado 81502-2567

December 30, 1991

Certified No. 25481

Mr. George G. Warnock
Todilto Exploration and Development Corporation
311 Washington Street, SE
Albuquerque, NM 87108

SUBJECT: Mining Lease AT(05-1)-ML-60.8-NM-B-1

Dear Mr. Warnock:

By letter dated October 25, 1991, you were advised by the Department of Energy (DOE) that:

1) Pursuant to Article XV, entitled "Performance Bond," the amount of the bond currently provided is inadequate to protect the DOE should your company fail to perform the required environmental reclamation activities upon termination of the lease and that the performance bond requirement was being increased to $200,000.

2) Pursuant to Article VI, entitled "Minimum Royalty," as provided in Amendment A002, the minimum royalty payments for 1988, 1989, 1990 and 1991 had not been paid and no request for waiver had been submitted by you pursuant to Article VI, and that $40,000 for the unpaid royalties were due the DOE.

To date, your letter dated November 11, 1991 is the only correspondence received and neither the increased bond requirement nor the payment of past due royalties was provided in your letter.

Therefore, it is hereby determined that you are in breach of Articles XV and VI of the lease, thereby justifying cancellation, effective immediately, of the lease pursuant to Article XXIV, entitled "Cancellation of Lease," of the lease.

Pursuant to Article XXVI, entitled "Delivery of Premises," you are hereby directed to surrender the leased premises in its present condition without removing any timbers, improvements or any security or safety measures previously installed.

Further, pursuant to Article XXVII, you are advised that the DOE reserves the right to have access to, and examine any and all directly pertinent books, documents, papers and records involving transactions related to the subject lease.

Pursuant to Article XXX, entitled "Disputes," of the lease, this written decision shall be the final and conclusive determination of the Contracting Officer unless within thirty (30) days from the date you receive this decision, you mail or otherwise furnish to me a written appeal that is addressed to the Energy Board of Contract Appeals. Enclosed is a copy of 10 CFR Part 703, entitled "Contract Appeals" which outlines the appeal procedure should you elect to appeal this determination. Your attention is directed to subparts 703.12 (Organization and location of Board); 703.101 (Appeals, how taken); and, 703.102 (Notice of appeal, contents of).

Sincerely,

Robert E. Ivey
Contracting Officer

Enclosures

cc: C. Freytag, Geotech
R. Bornstein, EPA
M. Olsen, DOE-ID, MS-1209
Hartford Accident & Indemnity Co.

EXHIBIT 2

TODILTO

EXPLORATION AND DEVELOPMENT CORPORATION

August 23, 1991

G. WARNOCK
PRESIDENT

RE: MINING LEASE NO. AT(05-1)-ML-60.8-NM-B-1, CLAUSE XXX. DISPUTES.

Mr. Bob Ivey
Contracting Officer
Department of Energy
P.O. Box 2567
Grand Junction, CO 81502-2567

Dear Bob:

You have made us aware that you plan an immediate permanent closing of Todilto's Haystack mine leased from you under the above cited reference. We have put you under notice by our registered letter dated July 31, 1991, to Mr. Carl Freytag, that we dispute the need for this permanent closing of the mine on health risk grounds. You have responded to our concerns with your letter of August 6, 1991. This, and subsequent telephone discussions have resulted in your insistence that you will effect the closing.

We contest this decision under Clause XXX, DISPUTES. in the Lease and, assuming your personal decision is irrevocable, hereby put you on notice that we demand a hearing before the Commission on the factual merits. Further, if you proceed with this action prior to a determination by the Commission, this will constitute a taking of Todilto's leasehold asset without compensation. We take this position for the following reasons.

1) We have demonstrated for you through copies of our gamma survey that no health risk exists on the property. You have agreed with us that the DOE also cannot duplicate the high readings reported by the EPA during their cursory and unprofessional survey of the property. Even accepting the EPA data as factual, which we do not, only the ore pad areas above the portal contain material reading at or above the 165uR/h. We have suggested to you that a simple burying of these areas at a reasonably cost would suffice to eliminate the non-existent risk from gamma radiation on the surface without the permanent closure of the mine openings. Our gamma survey of exhaust from these opening run over two hour periods, including the heat of the day in mid-summer, clearly demonstrates that there is no gamma radiation above the EPA determined background exiting the mine.

2) Our radon survey of these openings run on August 2, 1991 and faxed to you also demonstrates there is no radon exiting the mine above normal background. As a matter of fact the radon is so low as to be almost unmeasurable - even on a cool day when natural ventilation was reversing and exhausting the 8 foot by 8 foot portal. This survey plus 1) above clearly demonstrates that CERCLA criteria for radiological health risk do not apply to the mine openings.

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3) The mine is not "abandoned" and has never been since it's inception so that the CERCLA criteria for "abandoned" mine waste does not apply in this case. Factually, as the record shows, DOE has encouraged Todilto to maintain the lease and mine in an inactive status which it has done at considerable expense for over ten years in the exact condition as dictated by the DOE.

4) There exists in the mine approximately 120,000 pounds of readily minable uranium ore "resources" in pillars that are easily accessible when uranium prices return to only somewhat higher levels. At a price of $17.00 per pound, they will net some $200,000 and at $20.00 - some $600,000. I have sent you recent publicity on the uranium market that shows an expectation for at least a $17.00 per pound price in the near future. Further low grade reserves in addition to the pillars also exist which could be mined if the price were to go well above the $20.00 mark.

5) Todilto has reclaimed the mine exactly to DOE specification including refilling, soiling and reseeding the open pit and other areas of the property. Our Mining Plan, with the underground mine reclamation dictated by and approved by the DOE calls for us to maintain locked gates to restrict access to the mine during the inactive status. It was the intent of all parties, including the DOE, to <u>maintain</u> the natural ventilation of the mine to avoid an extremely high build up of radon underground which would endanger our underground inspections during the inactive period, and also our miners during reopening and add to the costs thereof. This is why the <u>DOE dictated grilled gates and vent covers.</u>

6) If and when Todilto abandons the lease, the Mining Plan calls for a simple "sealing" of the openings and "contouring" of the mine dump. You have furnished us with your proposal to permanently close the mine openings, including digging up the ore pads and placing them in the main haulage level and including buried <u>reinforced concrete bulkheads</u> over all openings that we estimate will cost from $70,000 to $80,000. This is <u>not</u> a "simple sealing" of the openings and would render the mine un-operational under any foreseeable economic conditions forever. It includes the destruction of the second escapeway inclined raise which is cribbed through the upper loose soil section. At your request and based on our long term mining experience, including as a contractor for the State of New Mexico Abandoned Mined Lands program wherein we effected many old mine closures, we supplied you with a closure program (which in principal we disagree with as the mine is not abandoned) costing only some $32,000. Neither of these proposals address the mine dump.

7) The mine dump is to be "contoured". Due to it's proximity to the section 24 property line which location was approved by the DOE, it will be extremely difficult to do anything with it under any reasonable cost basis. As a matter of fact, the argument can be made that it is already "contoured" because over the intervening ten years it has essentially stabilized itself and has not further eroded in recent years. Secondly there is no mention in the Mining Plan or Lease concerning a requirement to cover and seed the dump, as there specifically was for the open pit. This subject will apparently only come up on final relinquishment of the lease by Todilto sometime in the future. However, based on your verbal assertions in regard to final reclamation of the lease that you would now retroactively apply "new" standards that would meet CERCLA criteria, whether they are rational or not, we put you on notice that Todilto will only be liable for those reclamation cost contemplated by the Lease and Mining Plan as outlined above and which criteria were normal for the mining industry at that time, an easily documented format per the Abandoned Mined Lands programs and many others.

8) Todilto has offered DOE a compromise on this problem wherein we will abandon our leasehold asset in return for DOE releasing Todilto from any further reclamation costs. Our rational in this offer is, that for reason of your own vis a vis the EPA, DOE will apparently effect the permanent closing at greatly exaggerated cost not contemplated in Todilto's Lease or Mining Plan. As a small, poor company we believe this compromise is preferable to dragging the problem through the courts.

Sincerely,

GW/gbr
c/ Alan Hall
DOEHAY6.LTR